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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: HARTMUT EICHINGER ART UNIT: 3635  
SERIAL NO.: 09/297,237 EXAMINER: JENNIFER I. THISSELL  
FILED: MAY 17, 1999  
TITLE: PLAYHOUSE MADE FROM PREFABRICATED PARTS

PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION,  
PURSUANT TO 37 C.F.R. §1.137(b) AND (c)

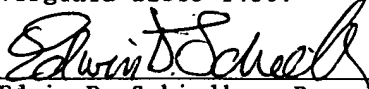
Hon. Commissioner for Patents  
United States Patent and Trademark Office  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

In reply to the Notice of Abandonment, dated September 16, 2003, Applicant respectfully petitions the Commissioner for Patents to revive the above-identified patent application on the ground of unintentional abandonment, pursuant to 37 C.F.R. §1.137(b). This Petition is accompanied by the following documents and fees:

"Express Mail" mailing label number ER 324248339 US  
Date of Deposit September 18, 2003

I hereby certify that this paper is being deposited with the U.S. Postal Service "Express Mail - Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to: Hon. Commissioner for Patents, United States Patent and Trademark Office, P. O. Box 1450, Alexandria, Virginia 22313-1450.

  
Edwin D. Schindler, Reg. No. 31,459

September 18, 2003  
Date

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1. The Petition Fee of \$650.00 (small entity), pursuant to 37 C.F.R. §1.17(m);

2. "Request for Continued Examination," pursuant to 37 C.F.R. §§1.14 and 1.137(c) ("In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with §1.114.");

3. The filing fee of \$375.00 (small entity), pursuant to 37 C.F.R. §1.17(e); and,

4. Copy of "Amendment in Response to Decision of the Board of Patent Appeals and Interferences," having a First Class Certificate of Mailing of August 25, 2003, pursuant to 37 C.F.R. §1.8, and filed on September 2, 2003, and which has been refused entry by the Examiner.

The Request for Continued Examination asks for the entry of the Amendment, mailed Monday, August 25, 2003, and constitutes the Reply required by 37 C.F.R. §1.137(b)(1).

A check in the amount of \$1,025.00, to cover the Petition Fee and the filing fee for the Request for Continued Examination is enclosed.

The factual and legal basis for this Petition is as follows:

1. On June 23, 2003, the Board of Patent Appeals &

Interferences affirmed the Examiner's final rejection of all pending claims in the application. Pursuant to 37 C.F.R. §§1.197 and 1.304, the time for taking further action in reply to the adverse decision of the Board was two months, or by Monday, August 25, 2003.

2. On August 25, 2003, Applicant filed an "Amendment in Response to Decision of the Board of Patent Appeals and Interferences," which carried a First Class Certificate of Mailing, pursuant to 37 C.F.R. §1.8, however, because no claims were allowed (or held allowable) by the Board, and no further action indicated by the Board's Decision has being necessary by the Examiner, the application inadvertently became "abandoned" after August 25, 2003, by operation of 37 C.F.R. §1.197, because it was not accompanied by a Request for Continued Examination under 37 C.F.R. §1.114, required to "reopen" the Board's Decision for further consideration under 37 C.F.R. §1.198.

3. The Examiner's "Notice of Abandonment" was received by the undersigned on September 18, 2003, indicating that the above-identified patent application had become abandoned and that the Amendment, mailed to the PTO on August 25, 2003, would not be entered. Following a brief review of the Rules of Practice, it became apparent that the Amendment after the Board's Decision, because no claims were held to be allowed or allowable, required the concurrent filing of either a

continuation application or a Request for Continued Examination. The previously overlooked Request for Continued Examination and RCE filing fee are therefore being filed in accordance with 37 C.F.R. §§1.137(c) and 1.198.

4. The Amendment, dated August 25, 2003 (and filed September 2, 2003) enters substantial amendments to the claims that go well beyond the subject matter of the claims earlier rejected by the Examiner and considered by the Board. Claim 20, the single independent claim pending in the application, has been amended as follows:

20. (currently amended) A playhouse made from prefabricated parts, comprising:

supporting posts having limit stops or locking elements and being formed as vertical plate-like bodies with horizontal slits; and,

a roof affixed to said supporting posts, said roof being a self-supporting slab resting in a horizontal direction directly upon, and positioned in, said horizontal slits of said supporting posts with said supporting posts vertically extending beyond said self-supporting slab, and with said self-supporting slab and said supporting posts being stably connected without permanent fixation means, thereby permitting said playhouse to be readily dismountable and transportable.

5. Applicant respectfully submits that the claims now

pending in the application have been substantively amended to present "the consideration of matters not already adjudicated" by the Board. See, 37 C.F.R. 1.198. See, also, In re Oelrich and Divigard, 212 USPQ 323, 325-326 (C.C.P.A. 1981) (*res judicata* does not have its usual impact when considering *ex parte* appeals; public interest in granting valid patents outweighs public interest underlying collateral estoppel and *res judicata*, particularly where issue presented is not substantially identical to that previously decided).

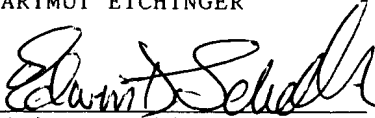
Accordingly, the "Amendment in Response to Decision of the Board of Patent Appeals and Interferences," dated August 25, 2003, and filed September 2, 2003, now accompanied by a Request for Continued Examination, and all requisite fees, should be appropriately considered by revival of the above-identified patent abandoned application, pursuant to 37 C.F.R. §1.137(b), and consideration on the merits of the foregoing Amendment, pursuant to 37 C.F.R. §1.198.

Such favorable action is respectfully requested and earnestly solicited.

Respectfully submitted,

HARTMUT EICHINGER

By

  
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September 18, 2003

The Commissioner is hereby authorized to charge the Deposit Account of Appellant's Attorney, Account No. 19-0450, for any additional fees which may be due in connection with the prosecution of the present application, but which have not otherwise been provided for.